

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JUSTIN BROWNING, <i>et al.</i>,	:	Case No. 3:15-cv-02687-JGC
	:	
Plaintiffs,	:	Judge James G. Carr
	:	
vs.	:	STATUS REPORT OF DEFENDANTS
	:	UNIVERSITY OF FINDLAY, DAVID
UNIVERSITY OF FINDLAY, <i>et al.</i>,	:	EMSWELLER, BRANDI LAURITA,
	:	MATTHEW BRUSKOTTER, RACHEL
Defendants.	:	WALTER, KEN WALERIUS, AND
	:	BREANNA ERVIN MILLER

COME NOW Defendants, the University of Findlay, David W. Emsweller, Brandi Laurita, Matthew Bruskotter, Rachel Walter, Ken Walerius and Breanna Ervin Miller, and submit this status report to the Court regarding its bifurcation proposal.

The University Defendants appreciate the Court's proposal to bifurcate this matter and set it for trial initially only on the issue as to whether the interactions at issue were or were not consensual. Counsel for the University Defendants have spoken at length regarding this proposal with Plaintiffs' counsel, and have also communicated with counsel for M.K. about it.

In considering this proposal, the University Defendants have more questions. For example, how many trials does the Court anticipate having in this matter – just the consent issue and then all other issues, or several mini-trials on several of the issues? Does the Court anticipate the same jury hearing all of these trials or multiple juries being involved? How much time does the Court anticipate might there be between the proposed trials? Also, would all of the parties be involved in all of the trials or would only some of the parties be involved in some of the trials?

This suit has 9 individual parties, and the University is also a party. Almost 40 depositions have been taken to date – the 9 individual parties, 5 individuals who were at the

house where the sex occurred, 12 other students and one non-student who had information about the night, 4 parents of Plaintiffs, 4 other employees of the University, and 3 other individuals. Plaintiffs have identified 10 experts, and one expert has been identified by Counterclaim Plaintiff M.K. The University Defendants have not yet identified their experts, but anticipate that if they participate in the consent trial, they would potentially call experts in response to some experts identified by Plaintiffs. At least part of the expert process would then need to be completed before the first trial. Given the number of individuals involved, it is difficult to envision how a trial even on the limited issue of consent could be done in two to three days, as it seems more likely it might take two weeks or more to try even that limited issue. Moreover, the testimony of many of the fact witnesses and expert witnesses herein touch on multiple issues in this case, and thus such witnesses would likely need to testify both in the consent trial and in other trials, possibly creating some redundancy and/or duplication of effort.

The University Defendants are in favor of trying to find a way to make the case more manageable, and move this matter forward. However, without additional information, it is difficult to determine whether bifurcating this consent issue would be a feasible way to do this. We look forward to further discussing this issue with the Court and counsel soon.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served electronically via the Court's ECF system this 17th day of September 2018, upon:

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